

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 EUGENE BRIAN GARVIE,

11 Petitioner,

12 v.

13 JASON BENNETT,

14 Respondent.

CASE NO. C24-0371JLR

ORDER

15 **I. INTRODUCTION**

16 Before the court are *pro se* Petitioner Eugene Brian Garvie's objections (Obj.  
17 (Dkt. # 32)) to United States Magistrate Judge S. Kate Vaughan's report and  
18 recommendation (R&R (Dkt. # 31)). Magistrate Judge Vaughan recommends that the  
19 court dismiss Mr. Garvie's 28 U.S.C. § 2254 petition for writ of habeas corpus (Pet.  
20 (Dkt. # 5)) for lack of subject matter jurisdiction and deny Mr. Garvie's pending motions  
21 (Dkt. ## 22-26, 28-29) as moot. (*See* R&R at 8.) Although Respondent Jason Bennett,  
22 warden of the Stafford Creek Corrections Center in Aberdeen, Washington

(“Respondent”), responded to Mr. Garvie’s § 2254 petition, he did not respond to Mr. Garvie’s objections. (*See* Pet. Resp. (Dkt. # 14); *see generally* Dkt.) The court has reviewed the report and recommendation, Mr. Garvie’s objections, the relevant portions of the record, and the governing law. Being fully advised, the court OVERRULES Mr. Garvie’s objections, ADOPTS Magistrate Judge Vaughan’s report and recommendation, DISMISSES Mr. Garvie’s § 2254 petition, and DENIES Mr. Garvie’s pending motions as moot.

## II. ANALYSIS<sup>1</sup>

A district court has jurisdiction to review a magistrate judge’s report and recommendation on dispositive matters. Fed. R. Civ. P. 72(b). “A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “The statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations *de novo* if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). Because Mr. Garvie is proceeding *pro se*, the court must interpret his petition and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003).

Mr. Garvie raises 14 objections. The court addresses each one below.

---

<sup>1</sup> Mr. Garvie does not raise any objections to the recitation of background facts set forth in the report and recommendation. (*See* R&R at 2-4; *see generally* Obj.) Therefore, the court adopts that portion of the report and recommendation.

1 First, Mr. Garvie objects that the report and recommendation “is procedurally  
2 deficient, pursuant to *Gonzales v. Crosby*, 545 U.S. 524 (2005), [for] failing to apply the  
3 successive petition analysis as set forth in *Sanders v. United States*, 373 U.S. 1 (1963);  
4 *Williams v. Taylor*, 529 U.S. 362 (2000).” (Obj. at 1.) Magistrate Judge Vaughan,  
5 however, did not need to consider whether Mr. Garvie’s petition was a successive  
6 petition because Mr. Garvie’s sole claim for habeas relief was not cognizable under  
7 § 2254 even if it was properly before the court. (R&R at 5.) Therefore, the court  
8 OVERRULES Mr. Garvie’s first objection.

9 Second, Mr. Garvie objects that the report and recommendation “failed to address,  
10 and the Magistrate failed to order, the respondent to produce a certified copy of the  
11 requested facts for claim adjudication pursuant to *Brady v. [Maryland]*, 373 U.S. 83  
12 (1963)[.]” (Obj. at 1 (citing *Brady* Mot. (Dkt. # 6)).) Magistrate Judge Vaughan,  
13 however, addressed Mr. Garvie’s *Brady* motion in her order directing service and an  
14 answer to Mr. Garvie’s petition. (See 4/16/24 Order (Dkt. # 9) at 2 n.1 (denying Mr.  
15 Garvie’s *Brady* motion because “Rule 5 of the Rules Governing Section 2254 Cases  
16 [“Habeas Rules”] prescribes what documents Respondent is required to produce in a  
17 federal habeas action”).) Accordingly, the court OVERRULES this objection.

18 Third, Mr. Garvie objects that the report and recommendation “failed to consider  
19 whether or not an evidentiary hearing would merit a resolution, or the Petitioner’s right to  
20 contest factual disputes and expand the record.” (Obj. at 2.) The decision to hold an  
21 evidentiary hearing is committed to the court’s discretion. *Schriro v. Landrigan*, 550  
22 U.S. 465, 473 (2007). “[A] federal court must consider whether such a hearing could

1 enable an applicant to prove the petition’s factual allegations, which, if true, would entitle  
2 the applicant to federal habeas relief.” *Id.* at 474. “It follows that if the record refutes the  
3 applicant’s factual allegations or otherwise precludes habeas relief, a district court is not  
4 required to hold an evidentiary hearing.” *Id.* Here, Mr. Garvie does not explain what  
5 evidence he could have presented at an evidentiary hearing or how such evidence could  
6 have demonstrated that the court has jurisdiction over this matter. (*See generally* Obj.)  
7 Thus, the court OVERRULES the objection.

8 Fourth, Mr. Garvie objects that the report and recommendation “asserts a  
9 Procedural Defense without ordering a party to asserting [sic] a defense: ‘defendant  
10 bearing the risk of equipoise.’” (Obj. at 2 (citing Habeas Rule 5; *Trest v. Cain*, 522 U.S.  
11 87, 88 (1997); *O’Neal v. McAninch*, 513 U.S. 432, 437-44 (1995)).) It is unclear which  
12 aspects of the report and recommendation Mr. Garvie is challenging in this objection, and  
13 Mr. Garvie does not identify the defense at issue. Therefore, the court OVERRULES this  
14 objection.

15 Fifth, Mr. Garvie objects that the report and recommendation “failed to take  
16 Judicial Notice pursuant to the mandatory provision of [Federal Rule of Evidence]  
17 201(d), nor was the Petitioner allowed to be heard pursuant to [Federal Rule of Evidence]  
18 201(e).” (Obj. at 2; *see generally* Judicial Notice Mot. (Dkt. # 7).) Magistrate Judge  
19 Vaughan denied Mr. Garvie’s motion for judicial notice in her April 16, 2024 order and  
20 informed the parties that she would “review the documents submitted by the parties once  
21 the briefing is complete and, if additional materials are necessary . . . so advise the  
22

1 parties.” (See 4/16/24 Order at 2 n.1.) On de novo review, the court agrees with that  
2 decision. Therefore, the court OVERRULES this objection.

3 Sixth, Mr. Garvie objects that “[t]he Report and Recommendation failed to  
4 address Petitioner’s Affidavit in Support of” his § 2254 petition. (Obj. at 2.) The court  
5 has reviewed the affidavit and found nothing that would alter the conclusion that the  
6 court lacks jurisdiction over this action. (See *generally* Aff. (Dkt. # 5-1).) Therefore, the  
7 court OVERRULES this objection.

8 Seventh, Mr. Garvie objects that Magistrate Judge Vaughan “violated the  
9 Magistrate’s Act by making a procedural defense without a record.” (Obj. at 2 (citing 28  
10 U.S.C. § 2250; *Dutty v. SCIP Superintendent Petsock*, 878 F.2d 123, 124 (3d Cir.  
11 1989)).) As with his fourth objection, Mr. Garvie does not identify which procedural  
12 defense he is challenging. (See *generally* Obj.) In any event, the court’s review of the  
13 report and recommendation reveals that Magistrate Judge Vaughan considered  
14 Respondent’s arguments in opposition to Mr. Garvie’s petition and agreed with  
15 Respondent that Mr. Garvie’s claim was not cognizable under federal habeas law. (See  
16 *generally* R&R.) Thus, the court finds on de novo review that Magistrate Judge Vaughan  
17 did not “mak[e] a procedural defense without a record” and OVERRULES this objection.

18 Eighth, Mr. Garvie objects that the court “violated the Magistrate’s Act and  
19 Habeas Rule 4 by failing to order an answer after meeting the non frivolous standard of  
20 28 U.S.C. § 1915.” (Obj. at 2.) Magistrate Judge Vaughan, however, *did* order  
21 Respondent to answer Mr. Garvie’s petition and Respondent complied with that order.  
22 (See 4/16/24 Order; Pet. Resp.) Therefore, the court OVERRULES this objection.

1 Finally, objections 9 through 14 assert that the court “violated 28 U.S.C. § 636 by  
2 failing to enter a de novo review of” Mr. Garvie’s (1) request for certification (Dkt. # 23);  
3 (2) request for records (Dkt. # 26); (3) motion to order response (Dkt. # 25); (4) motion  
4 requesting production of the record (Dkt. # 28); (5) motion requesting discovery (Dkt.  
5 # 24); and (6) motion to appoint counsel (Dkt. # 29). (Obj. at 2-3.) On de novo review,  
6 the court agrees with Magistrate Judge Vaughan’s recommendation that these motions be  
7 dismissed as moot due to the court’s lack of subject matter jurisdiction. Therefore, the  
8 court OVERRULES these objections.

9 In sum, having reviewed Magistrate Judge Vaughan’s report and recommendation,  
10 and having overruled all of Mr. Garvie’s objections, the court ADOPTS Magistrate Judge  
11 Vaughan’s report and recommendation in its entirety and DISMISSES Mr. Garvie’s  
12 petition with prejudice.

#### 13 IV. CONCLUSION

14 For the foregoing reasons, the court OVERRULES Mr. Garvie’s objections (Dkt.  
15 # 32) and ADOPTS Magistrate Judge Vaughan’s report and recommendation (Dkt. # 31)  
16 in its entirety. The court ORDERS as follows:

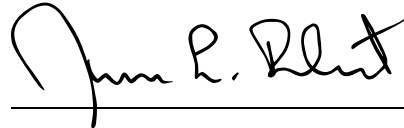
17 1. Mr. Garvie’s petition for a writ of habeas corpus (Dkt. # 5) and this action  
18 are DISMISSED for lack of subject matter jurisdiction;

19 2. Mr. Garvie’s pending motions (Dkt. ## 22-26, 28-29) are DENIED as  
20 moot;

21 3. A certificate of appealability is DENIED for the reasons set forth in the  
22 report and recommendation (*see* R&R at 7-8); and

1           4.       The Clerk is directed to send copies of this order to Mr. Garvie, to counsel  
2 for Respondent, and to Magistrate Judge Vaughan.

3           Dated this 5th day of September, 2024.

4  
5 

6 JAMES L. ROBART  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22